



June 30, 2014

Dr. Meredith Williams
Deputy Director
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 98512-0806

RE: Priority Products Draft Regulatory Concepts and Topics for Stakeholder Input

Dear Dr. Williams:

The Juvenile Products Manufacturers Association (JPMA) submits the following comments on the Department of Toxic Substances Control's (Department; DTSC) initial draft Priority Product selections pursuant to the Safer Consumer Products Regulation.

The Juvenile Products Manufacturers Association (JPMA) is a national not-for-profit trade organization representing 95% of the prenatal industry including the producers, importers and distributors of a broad range of childcare articles that provide protection to infants and assistance to their caregivers. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification and business development assistance conducted with appreciation for the needs of parents, children and retailers. JPMA continues to work with government officials, consumer groups and industry leaders on programs to educate consumers on the safe selection and use of juvenile products.

Throughout the development of the Safer Consumer Products Regulation (SCPR) JPMA appreciated DTSC's willingness to meet with industry stakeholders, JPMA staff, and third-party interest groups regarding this legislation; however, the identification process for the initial draft Priority Products did not benefit from industry stakeholder consultation, particularly as it relates Children's Foam Padded Sleeping Products Containing TCEP or TDCPP. As the DTSC is aware, our industry has worked hand in hand with the California Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation (BEARHFTI) in the development, and implementation of the revised Technical Bulletin 117-2013 (TB117-2013) which exempts certain juvenile products from having to meet California's strict flammability standard; which are similar to many other exempt products. These exemptions provided our manufacturers with the relief necessary to reduce the use of restricted flame retardant chemicals from many of our products. As you can imagine, when nap mats were listed as a priority product, we were both shocked and confused.

While the DTSC is not required to notify JPMA in advance when such determinations are made, as an Association, we were not able to effectively notify our manufacturers in advance of the determinations announcement that directly affected their businesses. While, much of the data presented identifying certain FR substances being widely detected in homes, offices and daycare facilities was unsurprising, the announcement provided little to no contextual background in terms of legal requirements imposed upon manufacturers prior to 2013. In addition such data was misleading as regards juvenile products, in that it failed to note that juvenile products were not the primary source of such substances which remain common household furnishings.

Like the DTSC, we share the mutual objective of eliminating the use of hazardous chemical flame retardants in our products, and wish to be an active and forthcoming participant in this process. We note that our member's products are already highly regulated under the Federal Hazardous Substances Act ("FHSA") which restrict acute or chronic hazardous exposure to children from children's products. Our comments highlight suggestions on issues that we believe require substantial consideration and clarification before moving forward with the Priority Product rulemaking processes and the release of the 3-Year Work Plan. As described more fully in these comments, JPMA hopes that these comments will assist the Department in effectively implementing regulations in a consistent manner with hazard based requirements.

In responding to the questions the DTSC asked, JPMA submits the following answers:

Topic 1: Priority Product description

1. Are the definition and terms clear and unambiguous as to which related products are included or excluded?
 - a. No. JPMA would encourage the DTSC to thoroughly evaluate the products that are excluded based on their rationale and ensure that their understanding of product is comparable with general industry accepted language. For instance, the DTSC notes that "Furniture covered by the requirements of CA TB117-2013" are excluded, yet they include some of the very products that were excluded in their priority product description. This can be very confusing for manufacturers in terms of understanding what they need to do to comply. As mentioned earlier, TB117-2013 exempted¹ a significant amount of our products from having to meet the flammability standard and as such are not likely to have these chemicals in their product. If a product does meet TB117-2013, it must include a label saying that it complies with the standard. Given the consumer demand to not include Proposition 65 restricted flame retardants in our products, our manufacturers have removed the use of these chemicals in order to meet consumer demand while still meeting the applicable federal and state

¹ http://www.bhfti.ca.gov/about/laws/mod_15day.pdf

- requirements that may require certain component material to meet strict flammability requirements..
2. Are there GPC GS1 brick codes that would be helpful in characterizing this product?
 - a. No.
 3. Are there other considerations for this Priority Product description that DTSC should know about?
 - a. Our members do business nationally and internationally. In this regard we favor uniform aligned regulation of product based upon generally accepted scientific standards for assessing hazardous exposure and health risk. In addition due to potential burdens on interstate commerce, we favor appropriate alignment with requirements in other states, such as Washington, as may be appropriate based upon appropriate risk assessment models.

Topic 2: Chemical(s) of Concern and alternatives

1. Are there other Candidate Chemicals in this product that you suggest be considered?
 - a. No. As we have noted our products are already subject to broad FHSA substance restrictions.
2. Are there functionally acceptable alternative to this Priority Product?
 - a. JPMA manufacturers are continuing to create and innovate new products that may which contain sourced foam materials in which restricted FR substances have been eliminated and are no longer being used in the manufacturing process.
 - b. No. See above.
 - c. N/A
 - d. N/A

Topic 3: Market Information

1. What is the market presence of the Priority Product?
 - a. Because the determinations made by DTSC concerning the scope of this product, it is difficult to quantify exactly how prevalent the product is in the marketplace, as we do not track component material in member's products. The design and construction of individual products is often considered proprietary by members.
2. How is the Priority Product marketed and/or sold?
 - a. The Priority Product varies in terms of how it is marketed and sold. Some manufacturers sell specifically direct to consumer, but the majority sell in specialty stores or the traditional big box retailers (e.g. Buy Buy Baby, Babies R US, Target, etc.)

3. What types of businesses are involved in the supply chain for manufacturing the Priority Product?
 - a. Design firms, inventors, engineers, mold manufacturers, an enormous array of material/component parts suppliers, assemblers and packagers are all involved in producing a wide array of products. Some may contain polyurethane foam, while others may contain different fill materials. As was previously noted restricted FR, Prop 65 listed substances have not been employed in foam material used since January 2013.

JPMA believes that there are lessons to be learned from the release of the three initial draft Priority Products, in particular, prior to identifying additional draft Priority Products and the 3-Year Work Plan, DTSC should improve the quality of research required for product-chemical selection. The identification of Nap Mats containing TDCPP in foam does not reflect the implementation of a robust, objective research process. In this case, we contend that the DTSC did not adequately consult industry in advance of issuing this notice. As stated earlier, it does not surprise us that this chemical was prevalent in recent studies conducted by DTSC due to the legal and regulatory requirements previously imposed upon our manufacturers through various state and federal initiatives. The dilemma for us rests in a lack of consultation prior to the announcement.

JPMA understands that DTSC chose to prioritize products and chemicals that could pose the most harm to a consumer. Given the population our products interact with, we accept robust regulation, but believe regulatory requirements must be based upon sound scientific risk assessment with due input from substance and material producers. Therefore, for future determinations, we recommend that DTSC should engage industry stakeholders directly – product, substance and material manufacturers– to review and improve upon specific composition and exposure assessments prior to the release of the draft Priority Products. We believe that industry consultation beforehand is critical to understanding the product value-chain, parties involved/ “responsible entities,” chemistries, uses, exposures, breadth of toxicological data available, current voluntary and/or regulatory programs, and market impacts. Additionally, we believe that this particular determination could have been avoided completely if DTSC coordinated with other regulatory agencies, specifically California agencies that have already acted to restrict the very same substances subject to parallel regulation by DTSC.

As you can imagine, your announcement caused significant concerns regarding the safety of our manufacturers’ products. The announcement resulted in increased calls to the manufacturers regarding the safety, and chemical make-up of the product, as well as resulted in confusion amongst consumers as to what they should look for in evaluating products. To help alleviate these concerns with manufacturers and with consumers, we assert that DTSC should provide definitions for and linkages between the phrases such as “potential public/aquatic exposure,” and “significant or widespread adverse impacts.” Currently these undefined phrases are causing confusion for manufacturers of the draft Priority Products. DTSC should be comprehensive and transparent in their assessment of

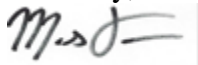
potential product hazards and exposures as part of the assessment and inclusion of products in the program.

To that end, the language used by DTSC in the public documents (e.g., fact sheets, and Priority Product Profiles, DTSC presentations) associated with the three, draft initial Priority Products should reflect the evolving nature of the Priority Product understanding And accurately qualify whether the substances are likely to be found in products currently manufactured and sold in Ca. While we understand the DTSC is trying to make determinations of the chemical use, broadly speaking of a product category such as Nap Mats without identifying which type of Nap Mat or the fact that many such products recently manufactured and sold, actually do not a substance of concern, can cause significant detriment to a given brand without just cause or determination. JPMA believes that DTSC should refrain from using language such as “avoid using X product, and, “...or minimize exposure to X,” without further clarifications so as not to confuse or mislead consumers.

As DTSC prepares for the release of the 3-Year Work Plan and the release of subsequent Priority Products, JPMA urges the Department to engage potential affected industries early-on in order to foster a mutually-beneficial dialogue. Greater industry consultation, thoughtful communications, and thorough product-chemical research will help to ensure more meaningful implementation of the Safer Consumer Products Regulation.

JPMA has the shared interest of ensuring that only *safe and reliable* products are available for use by the consumer. Please know that we remain committed to working with the DTSC in making our shared goals a reality. If you have any questions or concerns, please do not hesitate to contact me directly.

Sincerely,



Mark S. Fellin, MPS

Director of Regulatory and Legislative Affairs

The Juvenile Products Manufacturers Association (JPMA)